IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 192 OF 2006
with
NOTICE OF MOTION NO. 1028 OF 2006
IN
NOTICE OF MOTION NO. 1360 OF 2005
IN
SUIT NO. 1477 OF 2001

M/s.Sai Prem Co-op. Hsg.Soc. Ltd. ... Appellants

Versus

B.K. Appa and Ors. ... Respondents.

Mr. P.N. Modi, instructed by Ms. Vanita Kakar, for the appellants.
K.N. Sidhwa for respondent No.1.
Mr. T.N. Subramanian, Senior Advocate, instructed by Mr. R.N. Kachare, for respondent No.2.

CORAM: **KSHITIJ R. VYAS, C.J.** &
ABHAY S. OKA, J.

DATE: **JUNE 29, 2006**.

P.C.

Having heard the learned counsel for the parties, in our opinion, no interference is called for at this stage with the order of the learned single Judge. The suit is filed in April, 2001. The learned single Judge has refused to grant ad-interim order in Notice of Motion No. 1142 of 2001 taken out in the said suit. The appellants have taken out another Notice of Motion being Notice of Motion No. 1684 of 2004.

The said Motion was also withdrawn with liberty to take out a fresh Notice of Motion after amending the plaint. We are told that the third Notice of Motion, being Notice of Motion No. 1360 of 2005, taken out by the appellants is slated for hearing on 4th July, 2006. This is an additional ground for us not to entertain the appeal.

2. The learned counsel for respondent No.2 states that without obtaining Occupation Certificate, respondent No.2 will not create further third party interest and put any third party in the flats till the Motion is heard. The statement of the learned counsel for respondent No.2, in our opinion, would protect the interest of the appellants. Therefore, the request to continue interim relief is rejected. There being no substance in the appeal, the same is dismissed.

3. In view of the dismissal of the appeal, nothing survives in the Notice of Motion. The same is accordingly disposed of.

CHIEF JUSTICE

ABHAY S. OKA, J.